

Chapter 2

Intake and Evaluation of Complaints

- I. **Scope.** This chapter explains the general process for receipt of discrimination complaints under 88.9(3); screening and docketing of complaints; initial notification to complainants and respondents; the scheduling of investigations; and recording the case data in OSHA's Integrated Management Information System (IMIS).
- II. **Receipt of Complaint.** Any applicant for employment, employee, former employee or their authorized representative is permitted to file complaints under IOSH, either orally or in writing with any official of the Iowa Division of Labor (IDOL). If the complainant is unable to file the complaint in English, Iowa OSHA will accept the complaint in any language. Complaints under the jurisdiction of federal discrimination statutes will be forwarded to the U.S. Department of Labor, OSHA Regional Office.
 - A. When a complaint is received, basic information about the complaint must be recorded. Alternatively, the complaint may be referred by telephone to the Investigator for intake. A cover letter with the initial contact date and a Discrimination Questionnaire, with a Release form will be sent to the Complainant and the initial contact information will be put in a pending file.
 - B. Complaints received at the OSHA Regional Office or through other Federal or State governmental units normally are forwarded to the IA.
 - C. Whenever possible, the minimum complaint information should include: the complainant's full name, address, phone number and e-mail address; the respondent company's name, address, phone number and e-mail address; date of filing; date of adverse action; a brief summary of the alleged discrimination addressing the *prima facie* elements of a violation (protected activity, respondent knowledge, adverse action, and a nexus); and, if known, whether a safety, health, or environmental complaint has also been filed with IOSH or other State or Federal enforcement agency.

III. Screening and Docketing.

- A. As soon as possible upon receipt of the complaint, the available information should be reviewed for appropriate jurisdictional requirements, timeliness of filing, and the presence of a *prima facie* allegation. This may require telephone screening with the complainant to obtain additional information. The complainant will be told if the complaint falls under another jurisdiction. Complaints that fall under one of the federal "whistleblower" statutes will be referred to the USDOL

Regional OSHA office. A file of such complaints will be made; a number will be assigned and logged in the Discrimination Log and copies kept. The original documents will be sent to the Regional OSHA office and data will not be entered in the IMIS.

- B. Complaints which do not allege a *prima facie* allegation, or are not filed within the statutory time limit, will not be logged if the complainant indicates concurrence with the decision. If the complainant refuses to accept this determination, the case will be logged and subsequently dismissed with appeal rights. Complaints which are not logged, based on the initial screening, will not be assigned a case number or entered into the IMIS. A memorandum will be prepared documenting the screening interview and placed in the dead file.
- C. Cases that are assigned for investigation will be given a case activity number which uniquely identifies the case. The IMIS automatically designates the case number when a new complaint is entered into the system.
- D. The cover letter that is sent with the Questionnaire has all pertinent information for the complainant, date of initial contact, and that the investigator will be in contact. The name, address, telephone number and e-mail address of the Investigator will be included in the letter.
- E. The respondent notification letter normally will be hand delivered in person by the Investigator. The letter will be marked "Hand Delivered". The investigator will attempt to identify and interview Respondent's witnesses while at the employer's facility.
 - 1. In certain instances the respondent notification letter with requests for information may be mailed by certified mail, return receipt requested. Notice by mail may be appropriate when authorized by the IA.
 - 2. Prior to sending the notification letter, the investigator will first determine if a compliance inspection is pending under IOSHA. If such an inspection is pending, and the IA requests a short delay, the notification letter will not be delivered/mailed until such inspection has commenced in order to avoid giving advance notice of a potential inspection or interfere with an inspection in progress.

IV. Timeliness of Filing.

- A. Discrimination complaints must be filed within a specified statutory time frame (30 days) which generally begins when the adverse action takes place. If the discrimination is of a continuing nature, such as harassment or blacklisting, the time period begins when the last act of discrimination occurs. The first day of the time period is the day after the alleged adverse action. Generally, the date a complaint is considered filed is the day the complainant visits, emails, faxes or

telephones an IDOL staff person or verbally tells a CSHO during an inspection. For complaints sent by mail, the date filed is the date of the postmark. If the postmark is absent or illegible, the date filed is the date the complaint is received. If the last day of the statutory filing period falls on a weekend or a State/Federal holiday, or if the IDOL office is closed, the next business day will count as the final day.

- B. Complaints must be filed within 30 days of the adverse action. Complaints filed after this deadline will normally be closed without further investigation. However, there are certain extenuating circumstances which could justify tolling the statutory filing period for equitable principles. If the complainant does not withdraw, a dismissal must be issued if the complaint was untimely and there was no valid extenuating circumstance. The general policy is outlined below, but each case must be considered individually.
- C. An investigation must ordinarily be conducted if evidence establishes that a late filing was due to any of the following (including, but not limited to):
 - 1. The employer has actively concealed or misled the employee regarding the existence of the adverse action or the retaliatory grounds for the adverse action in such a way as to prevent the complainant from knowing or discovering the requisite elements of a *prima facie* case, such as presenting the complainant with forged documents purporting to negate any basis for supposing that the adverse action was relating to protected activity. Mere misrepresentation about the reason for the adverse action is insufficient for tolling.
 - 2. The employee is unable to file within the statutory time period due to debilitating illness or injury and has satisfactory proof of such.
 - 3. The employee is unable to file within the required period due to a natural disaster such as a tornado or flood. Conditions should be such that a reasonable person, under the same circumstances, would not have been able to communicate with an appropriate agency within the filing period.
 - 4. The employee mistakenly filed a timely discrimination complaint with another agency that does not have the authority to grant relief to the whistleblower.
- D. Conditions which will not justify extension of the filing period are, among others:
 - 1. Ignorance of the statutory filing period,
 - 2. Filing of unemployment compensation claims,
 - 3. Filing of workers' compensation claims,
 - 4. Filing a private law suit,
 - 5. Filing a grievance or arbitration action.

V. Scheduling the Investigation.

- A. As part of the case process, the investigator will prepare a case file containing the original complaint and other evidentiary materials supplied by the complainant.
- B. The investigator will generally schedule investigations in chronological order of the date filed, taking into consideration economy of time and travel costs, unless otherwise directed by the IA.
- C. When assistance is needed to interview witnesses or obtain evidence, the investigator will contact the IA/Legal Staff who will coordinate as appropriate.

Sample Documents

From

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U.S. Department of Labor
Occupational Safety and Health Administration

Whistleblower Case Activity Worksheet

Note: A separate worksheet form must be completed for each complainant.

Case Type:	<input type="checkbox"/> OSHA	<input type="checkbox"/> ACA	<input type="checkbox"/> DFA	<input type="checkbox"/> FWPCA	<input type="checkbox"/> TSCA	<input type="checkbox"/> SWDA	<input type="checkbox"/> CAA
<input type="checkbox"/> STAA	<input type="checkbox"/> AHERA	<input type="checkbox"/> ISCA	<input type="checkbox"/> SDWA	<input type="checkbox"/> PSIA	<input type="checkbox"/> FRSA	<input type="checkbox"/> NTSSA	<input type="checkbox"/> CPSIA
<input type="checkbox"/> CERCLA	<input type="checkbox"/> ERA	<input type="checkbox"/> AIR21	<input type="checkbox"/> SOX				
Statutory Implications:	<input type="checkbox"/> OSHA	<input type="checkbox"/> ACA	<input type="checkbox"/> DFA	<input type="checkbox"/> FWPCA	<input type="checkbox"/> TSCA	<input type="checkbox"/> SWDA	<input type="checkbox"/> CAA
<input type="checkbox"/> STAA	<input type="checkbox"/> AHERA	<input type="checkbox"/> ISCA	<input type="checkbox"/> SDWA	<input type="checkbox"/> PSIA	<input type="checkbox"/> FRSA	<input type="checkbox"/> NTSSA	<input type="checkbox"/> CPSIA
<input type="checkbox"/> CERCLA	<input type="checkbox"/> ERA	<input type="checkbox"/> AIR21	<input type="checkbox"/> SOX				
Complainant Information							
Last		First		Middle			
Address							
City				State		Zip	
Phone 1				Email			
Phone 2							
Phone 3							
Respondent Information							
Name <input type="checkbox"/> Company <input type="checkbox"/> Individual							
Address							
City				State		Zip	
Phone 1				Email			
Phone 2							
Phone 3							
# of employees				Unionized?			
Summary of the alleged retaliation (protected activity, respondent knowledge, adverse action, nexus)							
I certify that the complaint was filed with me on _____.							
Print Name (date)							
Signature				Title		Date	

OSHA-87 (rev. 7/2009)

Sample Complainant Notification Letter 88.9(3) Complaint

Date

Name
Address

Dear -:

Enclosed is a Discrimination Questionnaire/Statement for your use. Iowa Code 88.9(3) deals with rights of employees and representatives of employees. It prohibits reprisals in any form against employees who exercise their rights under the Iowa Occupational Safety & Health Act.

The Iowa Division of Labor Services enforces the Act and may be able to help you if it is determined that the requirements of the Act have been met.

The Act requires that the complaint of discrimination must be made within thirty (30) days of its occurrence. The date shown for receipt of your initial complaint is _____, _.

Please send **copies** of pertinent documents you have that may have a bearing on your complaint with the completed questionnaire to: **Division of Labor Services, IOSH Discrimination, 1000 East Grand, Des Moines, Iowa 50319**, postmarked no later than _____, _ . Retain originals and any other documents and evidence you may have or acquire and an investigator will contact you. Have all materials ready when the investigator meets with you.

The investigator will be acquiring your personnel file, medical records and any materials that the employer may have about you that the investigator feels is needed for the investigation of your complaint.

Your cooperation is essential for the proper resolution of this matter.

Sincerely,

Investigator's Name
Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Discrimination Questionnaire/Statement

DISCRIMINATION QUESTIONNAIRE/STATEMENT

Date_____

Complainant Name_____

Address_____

City, State, Zip_____

Telephone Number_____ Date of Birth_____

Cell Phone Number_____

E-Mail Address _____

Date Hired_____ SS#_____

Action: Terminated/Laid off/Discipline/Other, etc _____

Date Action was taken_____

Final Wage,\$-per hr/wk/mo _____ Job Title_____

Dept _____ Immediate Supervisor_____

Employer Name_____

Address_____

City, State, Zip_____

Telephone Number_____

Co. Official & Title_____

This statement, consisting of _____ pages, contains facts that are true and correct to the best of my knowledge and belief.

Signature

Date

Discrimination Investigator

Date

Union: ____Yes ____No Name of Union_____ Number of Members_____

Union Local #_____Address_____

City, State, Zip_____

Steward_____Telephone#_____

Business Agent_____Telephone#_____

Company reason for the action taken and Company official taking that action:

What do you believe the reason was for the action taken against you? (Give short explanation)

Was any action taken against any other employees for the same reason? (If so, include name(s), address (es), email address (es) and Telephone No(s) for those individual(s))

Have you applied for Unemployment Insurance? _____ Date _____ Appeal _____

Have you ever refused to perform any work? (Explain)_____

Have you ever received any reprimands, warnings? (Explain)_____

Have you ever complained to the Company about what you felt was an unsafe condition and to whom did you complain? Date? (Explain)_____

Have you ever complained to any Regulatory agency concerning safety and health problems in your work place that resulted in an inspection? (Explain: include the Agency, Address, Telephone Number, Date of complaint, and the reason for the complaint) _____

Did Company officials know of your complaint: Who knew and how do you think they knew?

Did any other employee(s) know of your complaint? If so include: Name(s), Address(es), Telephone No.(s)

List any individuals (witness(es)) that can support your claim of discrimination because of your safety and health activities, **Name(s), Address(es), Email Address (es), Telephone Number(s).** And give a brief explanation such as a conversation they may have overheard between yourself and a supervisor, between company officials, etc:

NARRATIVE

Page 1 of ____

In order to assist us in processing your complaint, please give a detailed written account of the events leading up to the action that was taken against you, **include: dates, times, and individuals name(s) and position(s), witnesses name(s) to an event/conversation(s)** and anything you feel may be pertinent to your case. ***INITIAL AND DATE ALL PAGES. BE SURE YOU HAVE SIGNED AND DATED THE FIRST PAGE UPON COMPLETION. (PRINT CLEARLY, TYPE, OR ATTACH COMPUTER COPIES DATED AND SIGNED)***

[illegible]

Initials_____ Date_____

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Initials_____ Date_____

Please sign and return with your information for release of records.

I authorize the release of copies of my personnel file and medical records and any documentation asked for to the Iowa Division of Labor.

Print Name

Signature

Date

Iowa Division of Labor
1000 East Grand Avenue
Des Moines, IA 50319
Iowa Occupational Safety & Health
Discrimination
515-281-5483
515-281-7995 fax

***Sample Respondent Notification Letter
88.9(3) Complaint “Hand Delivered”***

Date

HAND DELIVERED

Received By _____

Date _____

Name

Address

Dear :

This letter is to serve notice that a complaint has been filed with this office by _____ alleging a violation of Iowa Code 88.9(3). This complaint concerns alleged discrimination under the Iowa Occupational Safety and Health Act. In order to properly evaluate this complaint, please submit a full and complete written account of the facts and a statement of your position in regard to the termination/disciplinary action of _____.

Please include/provide a copy of _____ personnel file.

Also, please include the name(s), address(es), telephone number(s), and E-mail address(es) of any individuals who may have information that pertains to this case.

Your cooperation with this office is requested so that all pertinent facts of the case may be considered.

Sincerely,

Investigator's Name

Discrimination Investigator

Telephone Number

E-mail Address

Copy: Case File

Sample Administrative Closure Letter

Date:

Name

Address

Dear ,

I have received your inquiry about filing a complaint under Section 88.9(3) of the Iowa Occupational Safety and Health Act.

Your complaint filed under Section 88.9(3) of the Iowa Code is untimely. The Iowa code requires that a complaint be filed within thirty (30) days after a violation occurs or you first became aware of a possible violation. Your complaint exceeded the time provided by the statute. Therefore, no further action will be taken on your complaint. This office is administratively closing this file.

I regret that we could not help you but we thank you for your interest in safety and health.

Respectfully,

Investigator's Name

IOSH Discrimination Investigator

Telephone Number

Email Address

Copy: Case File